

COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

Via Electronic & U.S. Mail

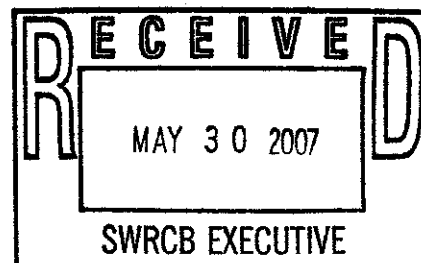
May 30, 2007

File No. 31-370.40.4D

Ms. Tam M. Doduc, Chair & Members of the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814

Attention: Ms. Song Her, Clerk to the Board

Dear Ms. Doduc, Chair & Members of the Board:



Proposed Amendment to the Policy for Implementing the State Revolving Fund (SRF) for Construction of Wastewater Treatment Facilities

The Sanitation Districts of Los Angeles County, a long-time participant in the SRF program, appreciate the opportunity to comment on the recently issued notice of a proposed amendment to the *Policy for Implementing the State Revolving Fund (SRF) for Construction of Wastewater Treatment Facilities*. Specifically, the State Water Resources Control Board (SWRCB) had instructed its staff to review the current policy pertaining to timely compliance with the Performance Certification / Corrective Action Report requirements and to recommend amendments to the policy. The Sanitation Districts provide wastewater conveyance, treatment, disposal, and water reuse services to over 5 million people in 78 cities and unincorporated territory within Los Angeles County.

The SWRCB has a long history of addressing issues related to the SRF without being overly broad or unduly harsh. We believe that same principle should be applied here. In order to adequately evaluate the proposed options, it is important to understand the underlying problem that needs to be remedied to ensure that the recommended solution really does fix the problem without inappropriately creating adverse impacts on the vast majority of loan recipients that are in full compliance with SRF program requirements.

SWRCB staff identified six agencies (with a total of ten loan projects) that had not complied with the Performance Certification requirements within the 15-month window following completion of construction. Staff further pointed out the magnitude of the problem by providing a table that shows the accumulated fines levied under the existing policy total over 50% of the original SRF loan amount. While the size of those fines are extraordinary and warrant attention, they don't adequately characterize the true problem. When questioned as to why the six agencies failed to comply with the requirements, SWRCB staff has told us that "they fell through the cracks" and that there was no intent by the loan recipients to defraud or not comply. In fact, when brought to their attention, all six agencies took steps to remedy the situation and, other than paying the fines, have now complied with the Performance Certification requirements. Additionally, during the same time period (August 2002 through May 2006), there were 62 projects that fully complied with the requirements in the 15-month time frame. Thus, the problem seems to be one of administrative procedure, and not an endemic problem requiring huge penalties or other extremely punitive measures.

Notwithstanding that, we believe that the SRF Policy does need to be revised to address this issue, as there does not appear to be underlying statutory authority for the SWRCB to assess fines for non-compliance with the SRF program reporting requirements. In the context of the Staff Report, three of the seven options presented (Nos. 4, 5, and 7, which includes the existing policy) involve the levying of fines and, thus, exceed the SWRCB's statutory authority. Consequently, they should be dismissed from further consideration. Option No. 6, the elimination of all penalties, does solve the immediate problem of

May 30, 2007

the fines, but does not provide any administrative remedies for ensuring compliance. Thus, it should also be eliminated from further consideration, since it is reasonable for the SWRCB to clearly state its expectations, procedures and consequences with respect to program reporting requirements, and simply eliminating the penalties does not address this need.

Option No. 1, the retention of a portion of the loan balance, would certainly provide agencies with a strong incentive to comply with the Performance Certification requirements. Unfortunately, it does so in an overly punitive fashion by penalizing all agencies, not just those who fail to comply with the Performance Certification requirements. Agencies would be required to carry the retention for up to 15 months and/or obtain some type of bridge financing. The added cost of doing this lessens the benefit of participating in the SRF program, hurting the overall long-term viability of the program. If the problem was widespread and more than an administrative issue, this solution might make sense; however, given the minimal nature of the existing problem, this solution would unfairly penalize compliant program participants and therefore should be eliminated from further consideration.

Option No. 3, the implementation of administrative procedures, is the preferred option from our perspective. The real problem is agencies "falling through the cracks" and inadvertently failing to comply with all of the SRF program requirements. Of the six agencies that failed to submit the Performance Certification, none of them did so with deliberation and purposeful noncompliance. In fact, when made aware of the problem, all six took steps to correct the situation and are now in compliance. Thus, additional administrative procedures should be developed to ensure that agencies are aware of the requirements and are given timely notice of any missed deadlines so that appropriate corrective steps can be taken. If an agency continues to fail to correct the problem, more stringent steps can then be taken.

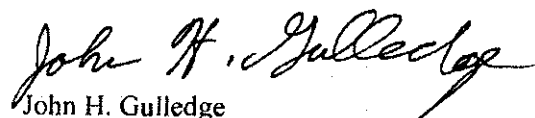
We recommend that the administrative procedures begin with the first annual SRF loan repayment, which is due 12 months after the completion of construction (a full three months before the Performance Certification is due). The SWRCB staff already sends out a reminder letter regarding that payment; the same letter could also contain a reminder regarding the Performance Certification. If an agency still fails to submit the required documentation, a meeting should then be held between the respective staffs to determine the cause for non-compliance. At the discretion of the SWRCB staff, a compliance time schedule could then be established for submitting the documentation. Failure to comply with the time schedule should result in one of the following two monetary disincentives being implemented.

- For agencies with other on-going loans, the suspension of future disbursements (Option No. 2)
- For agencies having no other loans in process, steps could be taken to accelerate the repayment of the existing loan.

In conclusion, the Sanitation Districts recognize the need for agencies to comply with all of the requirements of the SRF program but urge the SWRCB to address the problem before them by assisting loan recipient in the first instance, rather than by penalizing them and sending the message that paperwork requirements are more important than the infrastructure improvement projects themselves. Simple improvements in administrative procedures appear likely to address the issue in virtually all instances. It would cause great damage to the SRF program and to agencies' ability to comply with environmental regulations if punitive provisions such as those in Option 1 were implemented across the board. Therefore, we urge you to pursue a modified version of Option 3, as described above.

Very truly yours,

Stephen R. Maguin



John H. Gullledge
Department Head
Financial Planning Department